



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GROVER SELLERS
~~VOLLEYWATERSON~~
ATTORNEY GENERAL

Honorable J. E. McDonald, Commissioner,
Department of Agriculture
Austin, Texas

Dear Mr. McDonald:

Opinion No. 0-7230

Re: Whether or not the supplementation of salaries by the Federal Government to employ certificate seasonal inspectors on the Mexican Fruit Fly Project would violate any of the provisions of Article XVI, Section 33, of the State Constitution.

Your request for an opinion upon the above subject matter is as follows:

"The Forty-Ninth Legislature appropriated a number of salaries to be used on the Mexican Fruit Fly Project in the Lower Rio Grande Valley of Texas to employ certificate inspectors seasonal at \$90.00 per month. We find it impossible to employ efficient and capable help as is necessary on this project at the amount as stated above. The United States Department of Agriculture is the cooperating agency and is interested in an interstate movement of citrus fruit. The Federal Government has expressed a willingness to supplement these salaries in the amount of \$35.00 each, which will make a total of \$125.00 to be paid each employee.

"None of these employees holds any other office or position of honor, trust, or profit under this State or the United States. Each of said employees is under the direct and sole supervision of the State Commissioner of Agriculture. No other person or Department whatsoever holds or exercises any jurisdiction or supervision over said employees.

"In view of the foregoing, please advise if the supplementation of salaries by the Federal Government as above outlined violates any of the provisions of Article 16, Section 33, of our State Constitution."

Under the facts stated by you with respect to the method of supplementing the salaries of the named employees of your Department, your question should be answered in the negative.

Section 33 of Article XVI of the Constitution referred to by you, insofar as it concerns a restriction on payment of compensation, is as follows:

"The accounting officers of this State shall neither draw nor pay a warrant upon the Treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution.
* * * * *"

If such supplemental compensation under consideration is paid directly by the Federal Government to the State employee as a State employee performing services helpful alike to the United States and the State, without creating, or attempting to create an office, agency or employment of the United States as such, then Section 33 has no application.

We pointed out this distinction in our Opinion No. 0-2388-A, addressed to Honorable Roy C. Loventhal, Chairman, Livestock Sanitary Commission, a copy of which accompanies this opinion. In that opinion we said:

"In response to our inquiry, Mr. C. R. Landon, District Agent for the United States Department of the Interior, advised us 'that they (the two clerks) each have what is known as Agent appointments under the United States Department of the Interior. These appointments state the amount of salary to be paid from Federal funds and the amount to be paid from State funds. The total salary is based upon the Federal salary rates for the type of work required of these employees.'

"In the light of this information, it would seem that the Federal Government pays the two clerks in consideration for their services rendered pursuant to their individual capacity as agents of the United States Department of the Interior, and this being done irrespective of the fact that they incidentally occupy at the same time the position of State employees.

"The money paid these clerks in their capacity as a Federal agent springs from a source and travels

a channel separate and distinct from those funds appropriated by the State Legislature. These funds never reach the State Treasury. The point of its origin and disbursement is the United States Treasury.

"* * * * *

"The clerks are commissioned agents of the United States Department of the Interior, and accordingly, hold Federal positions of 'honor, trust, or profit', within the meaning of that phrase. None of the enumerated exemptions in the above quoted constitutional provision (Section 33) embraces this situation.

"Therefore, under the given facts, our opinion is that no provision of the Appropriation Bill would prevent the State employee's salary from being supplemented by Federal Funds; but, Section 33, Article 16, supra, would prohibit them from receiving any salary or compensation for their services rendered the State so long as this Federal relationship continues."

We trust that this is a sufficient and satisfactory answer to your question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By s/Ocie Speer
Ocie Speer
Assistant

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Enclosure

APPROVED JUN 15, 1946
s/Carlos C. Ashley
FIRST ASSISTANT
ATTORNEY GENERAL

This Opinion Considered And Approved In Limited Conference